

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-9011-2024
Date of decision : 23.04.2024

Mata Gujri Educational Society (Regd.), Village Chak Suhele Wala, District
Fazilka (Punjab) and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Sangram S. Saron, Advocate
for the petitioners.

Mr.T.P.S. Walia, AAG, Punjab.

Mr.Ferry Sofat, Advocate
for the complainant-Gurpreet Singh Mann.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 16.04.2024 (Annexure P-26) passed by the Chairman-cum-Appellate Authority under the Punjab Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as “2011 Rules) made under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “RTE Act) dismissing the application for grant of stay of the orders dated 01.03.2024 (Annexure P-18) and 13.03.2024 (Annexure P-20) in terms of which the recognition dated 01.04.2016 (Annexure P-2) granted to petitioner no.2 under the RTE Act has been cancelled / withdrawn.

2. Learned counsel for the petitioners has submitted that vide certificate dated 01.04.2016, the office of the District Education Officer, Fazilka, Punjab had issued recognition certificate to Mata Gujri Senior Secondary School Chak Suhele Wala, District Fazilka under Rule 11(4) of the 2011 Rules for the purpose of Section 18 of the RTE Act. It is further submitted that a show cause notice dated 27.02.2024 (Annexure P-15) was issued to the petitioners by the office of District Education Officer, Fazilka under the 2011 Rules stating therein that on account of the fact that the petitioners had given wrong information of land documents on account of which the NOC had been cancelled, the show cause notice was being issued to the petitioners for giving an opportunity to present their case on 01.03.2024 as to why further action be not taken under the RTE Act/ Rules. Reference in this regard is made to Annexure P-15. Learned counsel for the petitioners has submitted that the said letter / show cause notice was received by the petitioners on 28.02.2024 and on 01.03.2024, the petitioners had sought 10 days time so that they could present their case along with necessary record. In the letter dated 01.03.2024 (Annexure P-17) it was mentioned that the entire record was with their counsel who had filed cases in the High Court and the said counsel was not available for 5/6 days and thus, the said period of 10 days was required to file the reply / refer to the record. It is submitted that in complete violation of the principles of natural justice, the office of the District Education Officer on the same date i.e., 01.03.2024 without granting any opportunity to the petitioners to either file the reply or show the record, recommended the case for cancellation of the recognition-cum-form no.2 dated 01.04.2016. It is further submitted that while making the said recommendation, it was observed that although under

the RTE Act and 2011 Rules, there was no condition relating to the school land for the purpose of recognition-cum-form no.2, however, on the said basis and by relying upon A three Member Enquiry Committee report dated 12.07.2022, the said recommendation order was passed. It is further submitted that on the basis of the said recommendation, the Director, School Education (Elementary), Punjab, without granting any further opportunity of hearing, had passed the order dated 13.03.2024 (Annexure P-20) cancelling the recognition dated 01.04.2016. It is stated that aggrieved against the said action of the respondent authorities, the petitioner had filed CWP-7836-2024 and this Court vide order dated 05.04.2024 (Annexure P-22) after noting the contentions of the petitioners that the action of the respondent authorities was in violation of Rules 11 and 12 of 2011 Rules, had however in view of Rule 12 (d) permitted the petitioners to withdraw the writ petition with liberty to file an appeal before the appellate authority raising all the pleas and further granted liberty to move an application for interim directions / stay, with a further direction to decide the said application / interim directions within a period of one week from the date of filing of the appeal. It is argued that the appeal dated 09.04.2024 (Annexure P-23) was filed in which a specific prayer for stay of the impugned orders was also made. The written submissions (Annexure P-25) were also filed but however Chairman-cum-Appellate Authority vide a completely cryptic and non-speaking order had rejected the stay application. Reference has been made to the said order dated 16.04.2024 which is reproduced hereinbelow:-

“In the present petition, the Punjab State Commission for Protection of Child Rights, acting as the appellate authority, after due consideration of the oral averments as well as the written submissions made by all the parties and considering the mandate of the Right to Education Act, 2009 as well as keeping in mind the best interest of the children, the

Commission is not inclined to grant a stay in relation with the impugned orders dated 01/03/2024 and 13/03/2024 passed by the office of District Education Officer, Fazilka and Office of the Directorate of School Education (Elementary), Punjab respectively.

The application for grant of stay in the matter under reference is hereby dismissed.”

3. It is argued that apart from the fact that the impugned action is in complete violation of the principles of natural justice, even the impugned order is cryptic and non-speaking and deserves to be set aside on the said ground alone. Learned counsel for the petitioners has further made reference to the provision of RTE Act moreso, Section 2(f), 2(n) as well as Section 18 of the said Act. It is argued that Section 18 specifically provides that no recognition shall be withdrawn without giving an opportunity of being heard to the school, in question, in the manner which may be prescribed and that Section 38 (2)(i) of the RTE Act empowers the government to detail the manner of giving opportunity of hearing under the second proviso of sub section 3 of Section 18. It is submitted that in pursuance of the said power, Rules 11 and 12 of the 2011 Rules have been framed. Specific reference has been made to Rule 12 which is reproduced hereinbelow:-

“12. Withdrawal of recognition to schools - (1) where the District Education Officer either on his own motion or on any representation received from the person, has reason to believe, to be recorded in writing that a school recognised under section 12, has violated any of the conditions for grant of recognition or has failed to fulfil the norms and standards prescribed in the Schedule, he shall act in the following manner, namely: -

(a) issue a notice to the school specifying the violations of the condition for grant of recognition and seek its explanation within a period of one month from the date of issue of the notice;

(b) in case, the explanation is not found to be satisfactory or no explanation is received within the stipulated period. the District Education officer may cause an inspection of the school, to be conducted by the Committee referred to in sub-rule (6) of rule 7, which shall make due

inquiry and submit its report alongwith its recommendation for continuation of recognition or its withdrawal to the District Education Officer;

(c) the District Education Officer shall examine the report and after giving an opportunity of being heard to the management of the school concern, make recommendation in this regard and send the same to the Director for taking final decision in the matter. The Director, after taking into consideration the said recommendation and other relevant facts and circumstances of the case, may pass an appropriate order in the matter and send a copy thereof to the State Government. The order of de-recognition, if passed, shall be operative with effect from the succeeding academic year and it shall also specify the neighborhood school, to which the children of derecognized school shall be admitted.

(d) aggrieved with any order, passed by the Director under clause (c), the school management may file an appeal before the Punjab State Commission for Protection of Child Rights within a period of one month of passing such order, which shall decide the case after giving reasonable opportunity of being heard to the parties within a period of three months from the date of filing of such an appeal.”

4. It is argued that a perusal of the above mentioned Rule 12 would show that a specific procedure is mandated before withdrawal of the recognition of the school. The first ingredient to be fulfilled is that the District Education Officer should have reason to believe, which to be recorded in writing, that a school recognized under Section 12 has violated any of the conditions for grant of recognition etc. and thereafter a notice specifying the violation is required to be issued and an explanation is to be sought and if the said explanation is not found to be satisfactory, then the District Education Officer is empowered to cause an inspection of the school to be conducted by the Committee referred to in sub rule (6) of Rule 7 who has thereafter to make recommendation and thereafter the District Education Officer is to examine the report and another opportunity of hearing is required to be granted to the management of the school and it is only after considering the same, the recommendation is to be made.

5. It is submitted that the order of derecognition, in case passed, is also required to specify the neighbourhood school to which the children of the derecognized school are to be admitted and that in the present case, apart from the fact that no due opportunity was granted to the petitioners to file reply to the show cause notice or tender their explanation along with the record, even no further order for constituting a committee was passed and even thereafter once the report of the Committee had been sent, no opportunity was given to the management of school to make submissions with respect to the said committee / report. It is submitted that the committee / report relied upon in the recommendation dated 01.03.2024 is dated 12.07.2022, which was prior to the show cause notice dated 27.02.2024. It is submitted that in the recommendation itself, it had been noticed that no condition relating to land is an issue under the 2009 Rules or RTE Act and thus, even if there was an issue with respect to the school land, the same could not be made the basis for making the impugned recommendation or for passing the impugned order. It is argued that merely because the NOC by the Government of Punjab or affiliation by the CBSE has been cancelled, which also is a subject matter of writ petitions filed before this Court, the same would not entitle the respondent authorities to not follow the mandatory procedure as prescribed in RTE Act and 2011 Rules as cancellation of the recognition under the RTE Act is an independent action against the petitioners. It is submitted that CBSE affiliation would not have any bearing on the elementary education from Class 1 to Class 8 which is mandated under the RTE Act and by cancelling the said recognition, the future of the 1307 students who were studying in Class 1 to Class 8 in the school prior to the passing of the impugned action

has been put in jeopardy. It is submitted that the said arguments were raised in the written submissions but however perusal of the impugned order would show that no reference has been made to the same. It is argued that the stand that interest of the children has been taken into consideration while rejecting the stay, is absolutely misconceived as the impugned action has prejudiced the said children.

6. Learned State counsel as well as counsel for the complainant-Gurpreet Singh Mann have jointly submitted that they will be able to rebut the submissions, which have been made by learned counsel for the petitioners and have submitted that they would have no objection in case stay is granted to the petitioners till the time the appeal is decided by the appellate authority and in case the order is passed against the petitioners, then, the same be kept suspended for a period of 15 days so as to enable the petitioners to seek further legal remedy. It is further submitted that the observations made in this order should not be construed as a final opinion on merits and the State as well as the complainant be granted opportunity to rebut all the said arguments before the authorities.

7. Learned counsel for the petitioners has submitted that Gurpreet Singh Mann has no right to be heard and the said objection be kept open.

8. Keeping in view the above said facts and circumstances and the joint statements made before this Court, the present writ petition is partly allowed and the impugned order dated 16.04.2024 is set aside with the following directions / observations:-

- i) The impugned recommendation dated 01.03.2024 (Annexure P-18) as well as the impugned order dated 13.03.2024 shall remain stayed till the time the statutory appeal

filed by the petitioners is decided by the appellate authority and in case the order is passed against the petitioners, the stay would continue for a period of 15 days after the communication of the order to the petitioners to enable the petitioners to pursue their legal remedy.

ii) It would be open to the petitioners as well as State to raise all pleas, which are available to them, before the appellate authority and the observations made in the present order would not be construed as an expression on the merits of the case.

iii) The question as to whether Gurpreet Singh Mann has right to make submissions before the appellate authority or not is left open and it would be open to all the parties concerned to raise their respective arguments on the said aspect which would be considered by the appellate authority, in accordance with law.

(VIKAS BAHL)
JUDGE

April 23, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No